

Absurd Examples of CRA Qualifying Activities Thanks to the Proposed Rule



The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) are proposing a rule that would dramatically expand the types of bank activities that qualify for credit under the Community Reinvestment Act (CRA). Below are some absurd examples of what would qualify if their proposal is finalized – examples that are inconsistent with the original intent of CRA to focus on the credit needs of low- and moderate-income (LMI) borrowers and communities.

Stadiums in Opportunity Zones

The proposed rule would allow financing of improvements to athletic stadiums in low-income census tracts located in Opportunity Zones.¹ Recently, the City of Jacksonville borrowed \$45 million to pay for upgrades, a new outdoor amphitheater and indoor practice facility, next to the stadium in which the Jacksonville Jaguars play.²

One of the two largest banks in terms of deposit market share in Jacksonville had community development lending (\$15 million) that was of a lower dollar amount than the loan for the stadium. The community development lending of this bank supported 72 units of affordable housing and economic development.³ If financing for stadiums is allowed, banks would have an incentive to eliminate important community development lending directly benefiting LMI households and neighborhoods.

Another bank, which is also one of the two largest banks in terms of deposit market share, made \$21 million in community development lending that supported over 200 units of affordable housing.⁴ Again, would this bank continue to do this if large-scale financing and other infrastructure is promoted by a new CRA rule.

Small Business

The agencies proposed to revise the definition of a small business as one with revenues of up to \$2 million and annually adjusted for inflation, which would be an increase from the \$1 million limit currently.⁵ The CFPB estimated that 95% of small businesses had revenues of \$1 million or less.⁶ The agencies' change in the small business revenue size that qualifies a loan as CRA-eligible would divert CRA-qualified lending away from the smallest businesses.

1 Proposed rule, p. 100. §§25.04(c)(11) and 345.04(c)(11)

2 <https://www.jacksonville.com/news/metro/2015-12-08/story/city-council-unanimously-approves-90-million-improvement-ever-bank-field>

3 <https://www.occ.gov/static/cra/craeval/oct19/13044.pdf>

4 <https://www.occ.gov/static/cra/craeval/oct19/715115.pdf>

5 Proposed rule, p. 26, §§ 25.03 and 345.03

6 Consumer Financial Protection Bureau (CFPB), Key Dimensions of the Small Business Lending Landscape, p. 10, May 2017, <https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-small-business-lending-landscape/>

Middle- and Upper-Income Housing

The proposed rule could facilitate mixed-income housing as defined by middle- and upper-income housing. Current CRA guidelines provide partial CRA credit to mixed-income housing that is low-income and middle/upper income, but the credit is “based on the percentage of units set-aside for affordable housing for low- or moderate- income individuals.”¹¹ The proposed rule proposes to also provide CRA credit for the portion of units set aside for those that are middle income in high cost areas. As one example, §§ 25.04(c)(1)(i)(D) and 345.04(c)(1)(i)(D) of proposed rule defines affordable housing as rental housing “that partially or primarily benefits middle-income individuals or families in high-cost areas as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government.”¹² Affordable housing for low-income households is far more difficult to finance and, if these provisions are implemented, it could make up a shrinking share of the affordable rental housing promoted by CRA.

Financial Education for All Incomes

The proposed rule would allow banks to offer financial education to people of all income levels.⁷ Currently, this community development service is targeted to low- and moderate-income people. Thus under the proposed rule, banks could offer financial education to the Comptroller of the Currency and the Chairman of the FDIC and receive CRA credit. The provision of financial education must be consistent with the statutory purpose of CRA, that is, combating redlining and increasing access to credit and banking services to low- and moderate-income populations and neighborhoods.

The Dominant Single Metric and Three Large Credit Card Lenders

The CRA evaluation measure would likely be ineffective in stimulating increases in community development financing by large credit card lenders. We did a back-of-the-envelope calculation. NCRC approximated the CRA evaluation measure of three large credit card lenders. We made a conservative estimate of credit card lending to LMI borrowers (no data on this lending is publicly available). Even with a conservative estimate of credit card lending to LMI borrowers, the three large credit card lenders had ratios with just qualified credit card lending in the numerator that already exceeded the benchmark of 11% needed for an Outstanding rating.

In addition, one of the three large lenders had an overall community development minimum that today exceeds 2% of deposits. In other words, this large lender likely would not have to increase its community development financing in order to keep receiving Outstanding ratings. For this lender, stagnant performance would earn it Outstanding. The other two lenders would have to increase their community development financing but once they hit the 2% minimum required ratio, their performance would stagnate. The proposal would be likely to lead to lackluster CRA performance (that does not continually and affirmatively respond to needs) in the long term for these three large lenders.

Family Farm

An illustrative example of CRA qualifying activities under proposed §§ 25.04(c)(7)(i) and 345.04(c)(7)(i) is a loan to a family farm with gross annual revenues of \$10 million.⁸ According to the U.S. Department of Agriculture, only 1% of farms had sales of \$5 million or more. About 76% of farms had sales of \$50,000 or less.⁹ This change in CRA qualifying activities would divert lending away from the smallest farms.

⁷ Proposed rule, p. 28, §§ 25.04(c)(9) and 345.04(c)(9)

⁸ Community Reinvestment Act (CRA) Regulations, Joint notice of proposed rulemaking by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), see p. 97, §§ 25.04(c)(7) and 345.04(c)(7)

⁹ https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Economics.pdf